

BOARD OF ZONING APPEALS  
MINUTES  
January 26, 2010

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on January 26, 2010, in the MAPC Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, CHARLES YOUNG, STEPHEN HERMANN and JOSHUA BLICK (arrived at 1:50pm).

Board members absent:

STEVE ANTHIMIDES

City of Wichita staff present:

JEFF VANZANDT– Law Department

JR COX – Office of Central Inspection

The following Planning Department staff members were present:

JESS MCNEELY, Secretary

DONNA GOLTRY, Current Plans

DALE MILLER, Current Plans Manager

YOLANDA ANDERSON, Recording Secretary

GREENLEE I will call meeting of January 26, 2010 to order at 1:36pm. Let's approve the minutes for December 29, 2009; all in favor say aye?

YOUNG I moved that we approved minutes for previous meeting of December 29, 2009.

FOSTER Seconded.

**Motion 4-0 carries unanimously**

GREENLEE Do we want to move on to the OCI report or do we want to wait?

FOSTER Mr. BLICK had question last time.

GREENLEE Do we want to start?

MCNEELY We would like Mr. BLICK to hear enough case information to be able to vote on the case. The information presented will be the same as what has been mailed out. The concern is with Mr. BLICK missing any questions or statements made by the applicant relevant to the case.

GREENLEE It would be his feeling if he had sufficient information to vote.

VANZANDT My understanding is, if we have a quorum, we have enough members present to hear the case, regardless to whether he has enough information to vote. He can choose to abstain from voting.

YOUNG I agree.

FOSTER The issue has come up with people giving additional information that is not contained within the report.

GREENLEE Is the agent for the applicant here today? We will proceed to hear the case BZA2009-00057. It is a City sign code variance request to exceed the 400-square foot sign limitation in CBD, Central Business District zoning, with a 1200-square foot sign. Jess, are you ready to present the case?

MCNEELY BZA2009-57 is a City sign code variance to exceed the 400 square foot sign limitation. **BACKGROUND:** The Sign Code limits building signs in CBD Central Business District (“CBD”) zoning to a maximum of 20 percent of a building façade, and then to a maximum of 400 square feet in size per sign. The applicant wishes to install a 30 by 40 foot (1,200 square foot) LED sign on the south façade of the 11-story tall, half-block long building on the site. The sign would be on the protruding elevator shaft, and would be approximately 130 feet above ground level. (See the attached elevation drawings and photo images.) The proposed sign location has visibility from much of downtown, to include the Waterwalk redevelopment area, and from the elevated Kellogg Expressway. Under the Sign Code, the applicant could erect one 400 square foot sign per commercial building tenant, with up to 20 percent of the 14,560 square foot south façade for a total of 2,912 square feet of signage, or up to seven 400 square foot signs. LED signs are permitted by right in the CBD zone, and are regulated for brightness under the Sign Code. The applicants are currently renovating and redeveloping the building, known as “Sutton Place”, for commercial and office mixed-use. Part of the applicant’s redevelopment concept is temporary office space for various companies doing business in Wichita. LED sign technology can quickly adapt to new and changing tenants. See the attached additional graphics and letter from the applicant.

The application area is within the environs of several historic buildings, the most notable being the Old City Hall and the Carnegie Library. Both are west of the site and not in view of the proposed sign. Because the site is within historic environs, the Historic Preservation Board heard a request for this sign. The Historic Preservation Board found that the proposed size increase for the sign does not encroach upon, damage, or destroy the environs of listed historic structures. The Historic Preservation Board added a condition that they review the final design integrating the sign structure into the building wall.

Several other signs in the CBD exceed the 400 square foot sign limitation. An example would be the SC Telecom sign which was determined to be more than one sign for the sign permit. The most recent sign size variance granted by the BZA in the CBD would be the Intrust Arena sign, also visible from Kellogg, at 1,157 square feet. It should be noted that the Intrust Arena has an LED sign, similar in size to this request, inside the south facing windows which is not regulated by the Sign Code (as it is inside the building) but is clearly visible from the south. Similarly, glass enclosed skywalks in the CBD have signs exceeding

400 square feet, but are inside the building and did not require a sign permit. Also, numerous legal non-conforming (or grandfathered) signs in the CBD exceed the 400 square foot limitation. Many of these are painted wall signs which have existed for decades, such as the Farmers Bankers Insurance painted sign on N. Market Street, which is similar in size to the proposed Sutton Place sign. Also, temporary banner signs exist in the CBD without the Sign Code size limitations. A current example would be banner signs on the Waterwalk Condo building north and south facades, which are significantly larger than this variance request.

All properties surrounding this site are also zoned CBD. All buildings surrounding the application area are used for offices, similar to the proposed use of the application area. Other surrounding land uses include surface parking and a parking garage west of the site. The nearest residences with a view of the proposed sign is a multi-family residential building over three blocks and 1,400 feet south of the site.

**ADJACENT ZONING AND LAND USE:**

NORTH	CBD	office, commercial, parking
SOUTH	CBD	office, commercial, parking
EAST	CBD	office, commercial, parking
WEST	CBD	office, commercial, parking

*The five criteria necessary for approval as they apply to variances requested.*

**UNIQUENESS:** It is staff's opinion that this property could be considered unique. The Sutton Place Building was built in 1924, and was last renovated in the 1960s. The building is one of the few downtown office buildings taller than 10 stories, and is one of the few tall downtown buildings with clear visibility from the elevated Kellogg Expressway. This building is further unique in that its southern façade has an elevator shaft with few windows (the proposed sign location). The proposed "rebranding" concept is unique to older buildings needing renovation to be marketable.

**ADJACENT PROPERTY:** It is staff's opinion that granting the requested variance for building sign size would not adversely affect the rights of adjacent property owners. All properties facing the proposed sign are zoned CBD. The vast majority of the properties directly facing the sign, within three blocks, are used for surface parking. Other buildings within view of the proposed sign have larger, temporary banner signs.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the sign code would constitute a hardship upon the applicant. The 400 square foot building sign size limit would not be visible from Kellogg. Likewise, a 400 square foot sign would not have the desired effect within a 14,560 square foot building elevation. A sign on the south façade of this 11-story structure would need to be higher than the four-story building to the south. A 400 square foot sign at the proposed 130-foot height would not have adequate visibility from ground level. However, if a 400 square foot limitation is a hardship on this property, it is difficult to determine what minimum size of sign would no longer constitute a hardship on the applicant.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a building sign size increase would not adversely affect the public interest, as adequate identification and successful redevelopment of this historic building are certainly in the public interest. The proposed sign size is visually proportional to the larger building and is specifically sized to fit on the building's protruding elevator shaft. The Historic Preservation Board found that the proposed size increase for the sign does not encroach upon, damage or destroy the environs of listed historic structures. One 1,200 square foot sign on this building could be viewed as more in the public interest than 2,912 square feet of signage, or seven 400 square foot LED signs, all of which would be approved under the Sign Code.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance for increased building sign size does not oppose the general spirit and intent of the Sign Code. The Sign Code restriction for building sign size does not take into consideration the scale of this specific building, or the concept of multiple building tenants. The spirit and intent of the sign code is for adequate identification of buildings, aesthetically proportional to the given buildings; this variance request is consistent with that spirit and intent.

**RECOMMENDATION:** It is staff's opinion that the requested sign size for this office building redevelopment project is appropriate, given the scale of the building and the multiple tenant concept for the building. Several sign variances in the CBD make it clear that a 400 square foot sign limitation does not meet the sign needs of larger, taller, and multiple tenant buildings. This recommendation should note that Downtown Wichita is currently working on a new "Master Plan." Depending on the new Downtown Master Plan recommendations, future amendments to the Sign Code could address adequate sign size in the CBD. If the Board determines that the necessary conditions to grant a variance exist, the Secretary recommends that the variance to exceed the 400 square foot size limitation for a building sign in CBD zoning with a 1,200 square foot building sign be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved elevation drawing.
2. The 1,200 square foot building sign shall be the only sign on the south façade of the building on the site and be developed in conformance with the image proposed.
3. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

The applicant is here to answer questions, do you have any questions of staff?

GREENLEE Do board members have any questions?

FOSTER Jess, you have shown some different signs and you used the word comparable, is there any other sign like it in the downtown area?

MCNEELY The only digital sign this size is the one inside the arena. Other signs are larger but not digital.

FOSTER I am not counting that sign as it is inside the building. So, are there any other signs like this one in the downtown area?

MCNEELY No.

FOSTER The other signs shown were not an LED sign and the Arena signage was approved for the sale of tickets. Part of the applicant's redevelopment intention is for temporary business office space, can you explain that part to me?

MCNEELY The applicant can explain their business concept. As I understand it, this office building would lease temporary office space.

FOSTER Any definition as to what a temporary office space is? Is it 10 square feet or 100 square feet or what?

MCNEELY That would be up to OCI to interpret as none of our codes govern it. It will be up to OCI to enforce who is authorized signage on that building. None of our codes determine what size an office space is or how long a lease must be.

FOSTER I am seeing the 2004 sign code for the first time today prior to this hearing. What I have been using is the 1991 sign code. It clearly says that you cannot put signs against windows. According to what you have shown, there are three windows where the sign is going to be erected. May I assume that the 2004 code still has the same wording?

MCNEELY That requirement is still there. In this case, I understand that the three windows will be blocked in prior to the LED signage going up.

FOSTER So they will be removed as windows?

MCNEELY They have to meet code requirements.

FOSTER The "D" district in the 1991 code, I will assume it is the same as in the 2004 code today.

MCNEELY The zoning for this property is "CDB" Central Business District.

FOSTER Theoretically, each tenant would have the right to hang signage. The way it is written each current tenant could have a right to have a sign upon this building.

MCNEELY Right, limiting up to 20% of that façade.

FOSTER This is on section 2 of page 22 in the back of your book. The sign can be limited in total area of 20% of each building elevation and no one individual sign can exceed 400 sq ft. Do we have any history or research that tells us that we can total these for the building elevation? Is there a history showing the ability to do this? Has this always meant a total 20%?

MCNEELY The person who determines this is the Zoning Administrator, Kurt Schroeder in OCI. He has specifically stated that under the code, no one sign can exceed 400 feet. However, you can have multiple 400 sq ft signs on one building elevation until you exceed 20% of the building elevation.

FOSTER At what point can it add up to 20% of each elevation to get the total façade of the building? How is that applied?

MCNEELY On a square building with 4 façades, are you saying add up the area of the four facades?

FOSTER Well, you are saying that this has an over 14,000 square foot façade. So you add up the total façade, and that is what the 20% is of the building elevation.

MCNEELY Yes, you can add them up to the total elevation of the building

FOSTER In the 2000 code, I could not find any LED signage. I believed that the 2004 sign code has added LED signs, correct?

MCNEELY Correct.

FOSTER Can you give me an idea on how many signs can be shown on this sign?

MCNEELY Are you asking how many successive images can be place on one LED sign?

FOSTER Yes.

MCNEELY We do not have a sign code limit on the successive number of images on a LED sign.

FOSTER So they can have as many images as they like on one LED sign.

GREENLEE How much light will this sign emit?

MCNEELY The sign code does regulate the brightness of the signage. The lighting is measures in nits and that is regulated. They will have to comply with the sign code.

GREENLEE Is there any limitation on how fast can the images change?

MCNEELY No, in the CDB zone there is no regulation on how fast the images can change.

GREENLEE When it is limited to the tenants in the building, if Coke has an office in that building, can they have a Coke sign on that building?

MCNEELY Yes, It would be the same as on a 400 square foot sign if approved for that site. That is something that OCI will have to enforce.

BLICK JR, if you can answer this question. How does your office monitor and test these LED signs? Or do you have a test system in place on how you test them?

COX No they are not tested. The minimum brightness standard is a night time only standard that operates on point faces. We are satisfied with the response the applicant has provided with the request for the signage. If is not for off-site signage, it is for the tenants in that building.

YOUNG In summary, why are they asking to have more than a 400 square foot sign? Is it to be viewed from Kellogg?

MCNEELY The applicant would like for the signage to be visible from Kellogg. The height of the sign location would limit the visibility of a 400 square foot sign. Also, the size of the sign is in visual proportion with the building.

GREENLEE Any other questions for Jess?

HERMANN There will be temporary office suites, can any tenant with money place an image on that sign?

MCNEELY That would be up to OCI to review and enforce. Anything going on that sign would have to be relative to the tenants in that building. How OCI enforces that would be the same as with a 400 sq ft sign. Currently the Orpheum has office spaces in their building and an LED sign on the marquee, instead of the traditional marquee sign. I am certain that the LED sign advertises some of the tenants in the building as well as what is being featured at the theater.

HERMANN Is there a limitation on how close they can put individual signs together?

MCNEELY No. They are being up front with what they want from the City. They could have multiple 400 sq ft signs with minimal space between each sign. They could then have one image going across multiple signs. They instead decided to go with a variance request for one 1,200 sq ft sign.

FOSTER Is there a limitation on how many LED images are presented on each individual slide? Could they show 6 images on one slide at a time?

MCNEELY      There is no limitation set on how many separate images per slide.

GREENLEE      Any more questions for Jess? Would the applicants like to make comments at this time?

ELZUFON      Michael ELZUFON, 105 S. Broadway, Wichita, Kansas, 67202.

YOUNG      Can you tell me why you want this sign so big?

ELZUFON      We have a number of buildings we are revitalizing in this area and want to reintroduce them to meet current needs for office space along with revitalizing the downtown area. This building signage will be a concern for companies renting office space as they will want a way to advertise their name. This building has no opportunity for advertisement except for the south wall. I am not an expert with signage but I do have expertise with design. These windows located here are not good for viewing, it is all elevator shaft so closing them up is not a concern. The size of the signage has to do with the scale or size of the building. A smaller sign would not look right aesthetically because of the proportions, plus a smaller sign would be not worth doing at all because it would not be viewable. We were very proactive meeting with various groups, one of the groups was Historic Preservation with Kathy Morgan. A design meeting was set-up and this is the suggestion that came out of the meeting. What you need to look at is this is 11 stories up, a small sign would blend in and you would not be able to read what is there.

YOUNG      In meeting with the historical board over the design in relation with the aesthetics, did they have any concerns? Being a board member with the BZA, what I do not want is something like Times Square. Were their thoughts and ideas in relationship to this sign all in agreements?

ELZUFON      Yes, Jim Guy suggested increasing it due to the size of the building. We did spend a lot of time in discussions regarding this signage and how it will be applied to this building. The proportion is really what we are trying to get right with this signage. I am not trying to bring into downtown a Las Vegas or a Times Square. This sign is dimmed down so it will not drive anyone nuts. We spent a tremendous amount of time on how this sign is going to be developed. We are bound to meet all of the commitments and to incorporate it into the aesthetics of the area. There are millions going into the improvement of this building and a lot of it is going into the exterior, and the largest part of it is being spent on the south side of this building. We desire it to be a classy addition to the area as well as serve the needs of this office space building.

GREENLEE      Any more questions?



FOSTER Mr. Elzufon, can you explain the temporary building spaces? If this building was fully occupied, how many tenants do you think it would contain?

ELZUFON I will try to give you an answer. My partners and I specialize in office spaces. The average size rounded up is 90,000 square feet for this building. This building will cater to small business. There could be office spaces ranging from 1,000 square feet to 2,500 square feet. So, at 2,000 square feet you can have 45 tenants. At 1,000 square feet each, there could be 90 tenants, or at 10,000 square feet tenants would be 9. We are trying to create an environment to give newly started or young businesses a place to lease. We are not using the signage as a means to gain business. We are using the signage for the tenants in the building. This is going to be anytime offices which will be our brand. It would grant more flexible meeting space. The signage will not be just for any time office but for all the tenants leasing the office space.

FOSTER A person can buy a 12 by 12 foot office, put their name on the door, does he have to go there, does he have to put up a desk and phone and do you have any idea how the temporary tenant is going to operate or how long they are going to be there?

ELZUFON I did have a meeting with Mr. Cox and Mr. Schroeder. We will have a lease agreement that will be signed by the tenants. We are not going to say when they come and go or how often they have to be in their office or how long they can lease. They have a right to quiet enjoyment. We are just utilizing the new technology now available for signage.

FOSTER There is not a standard on how much space in the building. Would I have to add to the lease to have my ad placed on the sign?

ELZUFON The signage is something extra with cost of maintaining the signage.

FOSTER Everyone can advertise their product on the signage. So, if Coke were in the building, would they be able to use the LED to run their product they are selling in that building?

ELZUFON Correct.

FOSTER How important is it for them to see this signage? Is this what you called rebranding effort?

ELZUFON It is important for people to know that you are there. Eyeballing is very important on letting people know where you are.

FOSTER Is there more to the rebranding effort?

ELZUFON This building is very old and bland, and it is going to cost over \$2 million to renovate.

ELZUFON I have had the pleasure of working with Ms. Morgan and Hammond. This building is a historic building but is it not eligible for the historic state or national historic registry.

FOSTER You are saying this is not on the Historic Register?

ELZUFON Correct, back in the 20's it was a stunning building, but it is extremely outdated by today's standards.

FOSTER One more question, how many possible images do you intend to show on your LED signage?

ELZUFON What is expected is normal for signs all over the country. The best answer is that we will run one individual image at a time set on a sequence estimated at 8 seconds per image over the cycle or whatever code mandates. We have to meet code.

FOSTER You will be running each tenant over the cycle?

ELZUFON We will have maybe 50 tenants with its cycle lasting 10 minutes or more, we would have to cut the screen with 2 images to get through 100 tenants in that same time frame.

FOSTER You would multiply that by the number of tenants? You could have up to 90 tenants and it would look like a television screen to cycle through that many tenants.

ELZUFON This is new for us and there is not any other signage like this in downtown. I asked several people whether it added or detracted. They found it as a positive feature, but everyone has different preferences. I'm from Minneapolis. We have 8 or 9 of these signs in that city, but they are off-site signage. We are not trying to make a circus. We are trying to make things more attractive aesthetically in the downtown area. I am governed by the rules but I have every intention to put up something we all can be proud of.

FOSTER The problem is there are no rules for the how many images you can have. I appreciate you follow the rules but the problem is there are not any limits there.

ELZUFON Whatever code is present today we will follow those codes. What we ask for today is to exceed the 400 sq ft single sign limit.

FOSTER Have you ever worked in a city where there were limits on set on LED signage?

ELZUFON Yes, You have still images that change every few seconds. I have seen portable LED signage that has been brought in to feature special events and the norm is change. Generally it is a 5 – 8 second time limit before the image changes with the average of 20 images showing per cycle.

FOSTER This is an important case. My concern is this, let me give you an example. I got off Zoo Blvd and headed west. Before I passed a sign I counted 9 images. Luckily there was not much traffic. What bothers me is if the driver is watching this and there is traffic, this will create a problem, if the driver becomes distracted with viewing the image changes.

ELZUFON This will not be like a billboard along the highway. It is about 1000 feet away. It will not create a hazardous experience for anyone driving along Kellogg. The sign will be too small and too far away to create a hazard for Kellogg.

FOSTER Have you ever been asked in any other city to limit it to 2 second intervals?

ELZUFON No, I have not been asked.

FOSTER Thank you

GREENLEE Are there any more questions?

HERMANN I appreciate how you were forthcoming with questioning that we do not govern. I appreciate what you are doing in the downtown area. I am sure our contractors appreciate it during these times. I appreciate that you have come to request this because you could have meshed 4 signs together. Will you or your company be the ones that determine the content on the sign?

ELZUFON Yes. I thank you for your support. I look for great things.

GREENLEE Is there anyone else here that wishes to speak?

My name is Terry Rosenhammer. I am facility coordinator for Fidelity Bank at 100 E English and I want to make certain it is within code as our main concern is enforcement. This sign is very visible from our office.

GREENLEE We will close the discussion to the board members.

FOSTER The sign code regulations say 500 feet or 660 from the river?

MCNEELY What you are referring to is in regards to the billboard regulations. There are no signage regulations that would limit building signage from the river.

GREENLEE Is there a motion?

BLICK I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

GREENLEE In addition to your motion, will you included the addition to condition number 2?

BLICK Yes, I will like to add the condition as well that the sign will be up to 1200 square feet and that the building sign be in place.

MCNEELY There is one other thing that the HPB added a condition, and that needs to be added to this motion. That this sign be subject to all the Historic Preservation stipulations as well.

GREENLEE Is that okay?

FOSTER I would like to point out that the problem may or may not be unique. Also under the hardship, I think it raises a question as to whether this may be a self imposed problem and I am raising a question as to whether it is a self imposed hardship that the applicant has created in order to earn income. Under HBP, this is not a historically registered building. Under Spirit and Intent, not to be a hazard to the motorist and to be designed to be harmonious with all other buildings downtown. I want to point out to the Board there is not any other sign in the downtown area like this sign. I would like for the City to review and clarify regulations in regards to this type of signage in the downtown area. In other words, this is going to be a multiple TV show. I will go against the motion made. I do not want to hold you up. I think this is setting a very poor precedent to the downtown area for the long run.

YOUNG I do agree with Mr. Foster that we might have a problem setting a precedence. I think the applicant has met with legal, sign code and HBP to meet and satisfy our codes. We have an attorney here that oversees legal issues. The Historic Board has reviewed this. There are not many signs like this downtown. He has worked with many city staffs. I am happy to see the redevelopment. He is doing something that area businesses have not done. I seconded the motion to approve the signage request.

FOSTER No rules on how many office spaces or images displayed.

YOUNG With all due respect, we are not here to determined anything other than to exceed the 400 sq ft limit.

GREENLEE All in favor say aye.

**Motion carries 4-1**

GREENLEE We will now hear from OCI.

COX There are no cases to report. In our last meeting we did go out and check the brightness of the sign and it is within code.

BLICK I have a question for JR. The sign at WSU is very bright and it has full animation.

COX Yes, and that makes a difference where the animation may have added to the sign looking brighter.

HERMANN I have another subject right over the big ditch off Kellogg on the north side of the road. The WSU sign there made your eyes squint.

COX A police officer inquired about it and yes we have gone out to look at it. It was not too bright although there were a lot of lights.

BLICK Do you just go out and look at it or is there a method to gauge the brightness.

COX There is a device that is use and we will discuss it after the meeting.

FOSTER May we get a copy of the sign code to take with us sometime?

MCNEELY When we give a new member orientation, we take them over the policies and we do not give them a zoning code or a sign code but we make them readily available at every meeting in the binders set before you. Also, they are available on line. If you would like to have a copy of your own, we can provide a copy for you. I try to boil it down to the issue as to what in the code a variance is requested from.

FOSTER I think you do a good job in writing the staff reports. I think that what's in the code should be written out in the staff report as well.

GREENLEE Any other questions?

MCNEELY We do have a hearing next month. Donna will be the planner presenting next month. Donna will be conducting BZA for the next year.

FOSTER Do we have another appointment? Do we need to elect another appointment?

MCNEELY If the board loses a BZA Secretary, staff has to provide another one.

GREENLEE So you are saying you will not be at the next meeting?

MCNEELY No, I will not be here.

FOSTER I want to check the bylaws to see if we elect or appoint the secretary.

VANZANDT Here is a guideline to help you with the Kansas open meeting laws for your review. If you want a more formal meeting over this I will provide it.

GREENLEE Can we get a motion to adjourn.

YOUNG Motion to adjourn

AJOURMENT 3:16pm